Award No. 14159
Docket No. MW-14915

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Herbert Schmertz, Reference

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement and established practice thereunder when, beginning December 1, 1962, it assigned other than Water Service Sub-department employes to blow down a low pressure heating boiler at Klamath Falls, Oregon (Carrier's file MW 152-562).

(2) Water Service Mechanic C. A. Lovelady now be allowed thirty minutes' pay at his straight time rate for each of his regularly assigned work days and that he be paid a "call" (Rule 40) for each rest day and each holiday subsequent to December 1, 1962 that the violation referred to in Part (1) of this claim continues to exist.

EMPLOYES' STATEMENT OF FACTS: Claimant, C. A. Lovelady, was regularly assigned as Mechanic on Water Service Gang No. 3 at Klamath Falls, Oregon, on the Shasta Division, with a work week extending Monday through Friday (rest days were Saturday and Sunday).

Prior to December 1, 1962, the work of blowing down the automatically controlled low-pressure steam boiler located in the Mechanical Shop area at Klamath Falls was assigned to and performed exclusively by the Carrier's Water Service Sub-Department employes. However, effective December 1, 1962, the Carrier discontinued this well-established practice and assigned said work to its Mechanical Department employes, who do not hold any seniority under the provisions of this Agreement.

The claimant was available, willing and fully qualified to have performed the subject work, had the Carrier so desired.

The Agreement in effect between the two parties to this dispute dated January 1, 1953, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

cannot determine which provision or provisions Petitioner has in mind. In any event, in view of the facts evident herein, none of the provisions of that agreement are here applicable, and Carrier therefore asserts that said agreement has not been violated in any manner whatsoever in the circumstances forming basis of this claim.

In view of the foregoing, it is obvious that Petitioner is attempting to have the Board, through the medium of a sustaining award, expand the Scope Rule to include coverage that has not been agreed to by the parties to the agreement. This Board has stated on occasions too numerous to require citation that it does not have the authority to amend existing rules or to write new ones.

Insofar as the claim for overtime rate in this case is concerned, if there were any basis for claim submitted, which Carrier denies, nevertheless, the contractual right to perform work is not the equivalent of work performed. That principle is well established by a long line of awards of this Division, some of the latest being 6019, 6562, 6750, 6854, 6875, 6974, 6978, 6998, 7030, 7094, 7100, 7105, 7110, 7138, 7222, 7239, 7242, 7288, 7293, 7316, 8114, 8115, 8531, 8533, 8534, 8568, 8766, 8771, 8776, 9748, 9749, and 10990.

CONCLUSION

Carrier submits it has clearly shown the within claim to be entirely lacking in merit and if it is not dismissed, asks that it be denied. (Exhibits not reproduced).

OPINION OF BOARD: The essential facts of this case are not in dispute. In July of 1962 a change in steam sources was instituted at Klamath Falls, Oregon whereby several individual boilers were used instead of a central steam plant. The operation of these boilers requires that they be "blown down" periodically.

Initially the task of "blowing down" these boilers was assigned to the Water Service Sub-department, but as of December 1, 1962 the work was assigned to Mechanical Department employes.

It is this assignment which the Organization on behalf of Water Service Mechanic C. A. Lovelady contends violates Rules 8, 9, 15 and 16 of the agreement.

Specifically it was the Organization's position first that a District-wide practice is sufficient to support a finding that work has been reserved to a particular group and secondly that the Record supports a conclusion that within the District in question work of this nature prior to December 1, 1962 was exclusively assigned the Water Service Sub-department.

To support this position the Organization drew the Board's attention to the fact that seniority was established within the agreement [Rule 8] upon a district basis and that for it to have any applicability, work reservation must at a minimum coincide with that district. It was therefore urged that since there had been an exclusive assignment of this work to the Water Service Sub-department a practice had been established which would support a finding that the work was reserved to them. In support of this position the Organization cited Award 13572 [Engelstein] which stated:

"The Scope Rule of the effective Agreement is general in character and does not delineate or grant to the employes a specific type of work to be done by them exclusively. There is convincing evidence, however, of an existing practice of B & B Employes performing work of repairing office furniture on the Portland Division. The conduct of the parties to a contract is often just as expressive of intent as the written word. At Eugene and Portland, the practice of B & B Employes performing this work over a long period of years is evidence of Carrier's recognition of their right to this work."

The Carrier took the position that where the agreement contained a Scope Rule whose applicability was system wide and where there was no specific reservation of work established in the agreement a practice yielding a work reservation had to be system wide. The Carrier therefore rejected the Organization's contention that a District practice was sufficient to support a work reservation finding. The Carrier cited a number of awards on this point. (Award 13347 [Hutchins], Award 13094 [West], Award 13048 [Wolf], Award 12787 [Ives], Award 11758 [Dorsey], Award 11526 [Dolnick], Award 11239 [Moore], Award 10615 [Sheridan], Award 7031 [Carter].)

The issue before this Board, therefore is whether a District-wide practice is sufficient to support a finding that certain work has been exclusively reserved to a particular group. The awards on this issue by this Board are not consistent.

The Carrier has argued that since the Scope Rule is system wide any practice must be as broad. The Organization has argued that since seniority of Water Service personnel is district limited so may be the work exclusively reserved to them.

The awards of this Board on this issue are far from consistent. Some hold that the practice must be system wide while others hold that a district or location practice is sufficient. Each party has cited a number of cases in support of his position. Indeed each party has cited a case under this very agreement the holdings of which are in conflict. (See Awards 13579 [Wolf] and 13572 [Engelstein].)

This Board deems correct those awards which have held that where the Scope Rule is system wide the practice must coincide. This opinion is not arrived at merely because the majority of cases appear to adhere to this position. Rather it is our view that since the Scope Rule explicitly says that the Rules of the agreement apply to all Sub-departments equally and without exception for a practice to change the application of, or indeed add to or modify the agreement it certainly must be as broad in its application as the written rules.

The parties to this agreement have not negotiated any local working conditions. The Scope Rule says that the written rules govern the working conditions of all Sub-departments. It further lists illustratively the work classifications to which the rules will apply. It does not list them exclusively. In previous cases this Board has held that reservations of work for one group may be achieved by a long, continuous assignment to that group on a system wide basis. We agree with those cases. Through past practice they have merged the parties mutual understandings as to work reservation into the agreement.

The important aspect of those cases, however, is that they only formalize "working conditions of employes in all sub-departments" as contemplated by the Scope Rule. To formalize working conditions on a lesser basis e.g. by location or district appears to this Board to be beyond that contemplated by the parties as set forth in the Scope Rule.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1966.